

In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 18016 of 2004

Date of Decision: 30.11.2006

Achhar Singh

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. B.S. Chahal, AAG, Punjab
for the respondents.

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J.S. Khehar, J. (Oral).

The petitioner was inducted into the Indian Army as a Sepoy on 9.12.1964. After having rendered 24 years and 22 days' service in the Indian Army, the petitioner was discharged on 31.12.1988. It is not a matter of dispute, that the petitioner is earning pension on account of the service rendered by him in the Indian Army.

After being relieved from the Indian Army, the petitioner responded to an advertisement dated 15.12.1991 for appointment against the post of Constable in the Intelligence Wing of the CID. The petitioner was found suitable, and was eventually selected and appointed as such. The pleadings of the instant writ petition reveal, that the petitioner assumed his

duties against the post of Constable on 27.7.1992. He continued to discharge his duties as Constable till the date of his retirement on superannuation i.e. till 30.6.2002.

Consequent upon his retirement on attaining the age of superannuation, the petitioner claimed pension by submitting various representations. Since the representations were not responded to, the petitioner approached this Court by filing the instant writ petition.

The first contention of the learned counsel for the petitioner is based on Rule 6.1 of the Punjab Civil Services Rules, Volume-II, Part-I . The aforesaid rule is being extracted hereunder:-

“6.1. The amount of pension that may be granted is determined by length of service as set forth in the succeeding sections of this Chapter. Fractions of a year equal to six months and above shall be treated as a completed six-monthly period for the purpose of calculation of any pension admissible to such an officer.”

According to the learned counsel for the petitioner, on the basis of Rule 6.1 of the Punjab Civil Services Rules, Volume-II, Part-I, the petitioner should be deemed to have rendered 10 years of qualifying service, and as such, is liable to be held as entitled to pension.

Before we attempt to interpret Rule 6.1, extracted hereinabove, it would be essential to notice, that the acknowledged factual position is, that the petitioner has rendered 9 years 11 months and 3 days of service from the date he joined as a Constable on 27.7.1992 till the date of his retirement on superannuation i.e. till 30.6.2002. There can be no dispute, that the petitioner is entitled to count 9 years of qualifying service on

account of the service rendered by him. The only issue is, whether the petitioner can be treated to have rendered one complete year of service on the basis of having served for an additional period of 11 months and 3 days ? A perusal of Rule 6.1 of the Punjab Civil Services Rules, Volume-II, Part-I reveals, that a fraction of a year, exceeding 6 months, is to be treated as 6 months' service. For the 10th year, admittedly, the petitioner has rendered a fraction of a year's service, exceeding 6 months, and as such, has to be held to be entitled to 6 months' qualifying service for the said period. Rule 6.1 interpreted, thus, cannot, in our view, lead to a conclusion, that the petitioner had rendered 10 years of qualifying service at the time of superannuation on 30.6.2002.

The second contention of the learned counsel for the petitioner is based on Rule 4.3 (b) of the Punjab Civil Services Rules, Volume-II, Part-I. Rule 4.3 (b) alongwith the Notes thereunder, is being extracted hereunder:-

“4.3(b). Service pensionable under military rules which does not terminate before a pension has been earned in respect of it shall not be allowed to count for pension under civil rules without the sanction of the competent authority.

Note.- An officer, ex-soldier, ex-sailor or ex-airman will not be brought under the operation of this rule as a matter of course. Each case will be decided on its merits, e.g., there may be cases in which it may be open to a claimant for pension to add military service during the Great War to former non-pensionable service in the Army in order to claim the benefit of a military pension. In such cases it may be to the advantage of

the claimant that he should not be brought under the operation of this rule. The bearing of paragraph 574 of the Pay and Allowance Regulations of the Army in India, Pat II, on the position of soldiers of the Indian Army who re-entered during the Great War, deserves consideration in this connection.

Note 2. - To be eligible for the concession in this rule, the individual concerned should take his discharge from the Army, Navy or Air Force within 12 months of the date of his confirmation in the post pensionable under civil rules. This limit will be relaxed by competent authority only in special cases.

Note 3. - Employees in the Military Police have the option of counting service under any other rules in these Regulations which would give them a similar or more liberal concession.

Note 4. - Omitted.

Note 5. - When an order is passed under this rule allowing previous military service to count as part of the service qualifying for civil pension, it should be taken as carrying with condonation or breaks, if any, in the Military service, or the break, if any, between the military service and the civil service.

Note 6. - Omitted.

Note 7. - It is permissible under this rule to allow military service interspersed between two periods of civil service to count for civil pension: Provided that the conditions laid down in this rule are otherwise fulfilled. The share of pension proportionate to military service in such cases will be borne by

the Defence Department.

Before orders are passed, in any case, the military service of the individual concerned and the amount of gratuity paid to him should be verified by reference to Defence Accounts Officers concerned.

Note 8. - The sanction regarding the counting of military service should be accorded by the competent authority at the time of appointment of the person concerned and not at the time of his retirement from civil service. Sanctions accorded in such cases are required specially to mention the amount of gratuity or bonus recoverable, the number of monthly instalments in which the bonus or gratuity is to be recovered, and the date from which the recovery is to commence. If, in any case, the gratuity is not to be recovered, the fact will be specially stated in the sanction. The gratuity once refunded in order to secure the benefit of counting former military service for civil pension cannot be paid back in any circumstances.

Note 9. - The question of the amount of military or War (Great War) service which a Government employee is entitled to count for civil pension should be considered as soon as he joins a pensionable post. In the case of non-gazetted Government employee the amount should be shown in a certificate to be recorded in the service book or the service roll, as the case may be, by the Head of Department who should satisfy himself that the conditions of this rule and rule 4.6 or other relevant rules or instructions for counting military service for civil pension are

fulfilled. The military service should in all cases be verified after reference to the Defence Accounts Officer concerned. References to the relevant rules should be quoted in the certificate and attested copies of the records relied upon in support of it should be attached.

Note 10.- See also notes under rule 4.6-A.

Note 11. - The expression 'gratuity or bonus' occurring in clause (a) refers to service gratuity or bonus only, and not war gratuity or bonus received as a reward for War Service.”

A perusal of Rule 4.3 (b) reveals, that an employee rendering service in civil employment, is entitled to count military service as qualifying service, subject to the condition, that he is not in receipt of any pension for the military service rendered by him. Since the admitted factual position in the instant case is, that the petitioner is in receipt of pension on account of the service rendered by him with the Indian Army, we are satisfied, that Rule 4.3 (b) of the Punjab Civil Services Rules, Volume-II, Part-I, is also inapplicable to the petitioner. There are other reasons also for the inapplicability of Rule 4.3(b), extracted above, but the same need not be examined in the instant matter in view of the conclusion already drawn hereinabove.

The third and last contention of the learned counsel for the petitioner is based on Rule 4.2 of the Punjab Civil Services Rules, Volume-II, Part-I . The same is also being extracted hereunder:

“4.2. (1) A Government employee appointed to a service or post after the twenty-sixth day of October, 1960, shall be eligible to add to his service qualifying for superannuation

pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years, or a period of five years, whichever is less, if the service or post to which the Government employee is appointed is one--

(a) for which post-graduate research or specialist qualification, or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government employee unless his actually qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) Government employee who is recruited at the age of thirty-five years or more, may within a period of three months from the date of his appointment elect to forego his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub-rule (2) once exercised, shall be final.

(4) A Government employee, who is blind, deaf, dumb or otherwise orthopaedically handicapped or widow at the time of his entry into Government service, shall be eligible to add to his service qualifying for superannuation pension a period of five years.

(5) A Government employee, who becomes blind, deaf, dumb or otherwise orthopaedically handicapped during the service and is retired from service as a result thereof shall also be eligible to add to his service qualifying for superannuation pension, a period of five years.

2. They shall be deemed to have come into force and with effect from the 22nd day of December, 1980.”

A perusal of the aforesaid rule reveals, that the same would be applicable primarily in cases where the age of recruitment exceeds 25 years. The petitioner has placed on the record of this case the advertisement dated 15.12.1991 (as Annexure P-1) in response to which he was selected and appointed with the respondents. A perusal of the aforesaid advertisement reveals, that applications for appointment against the post of Constable were invited from amongst candidates who were in the age group of 18 to 22 years. It is, thus apparent, that the age of recruitment for the post, under reference (to which the petitioner was appointed on 27.7.1992) is not a post where the ordinary age of recruitment exceeds 25 years. The rule, under reference, is also inapplicable, as neither clause (a) nor clause (b), which are imperative pre-conditions for the applicability of Rule 4.2 of the Punjab Civil Services Rules, Volume-II, Part-I, are fulfilled in the case of the petitioner. In this case, admittedly, the actual government service rendered

by the petitioner was for a period of 9 years 11 months and 3 days i.e. less than 10 years. The proviso to Rule 4.2 mandates, that the applicability of Rule 4.2 of the Punjab Civil Services Rules, Volume-II, Part-I would require service of at least 10 years.

No other contention was advanced by the learned counsel for the petitioner.

In view of the above, we are of the view, that the petitioner is not entitled to pension as he does not possess the minimum qualifying service which would entitle him to pension.

Dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

30.11.2006
sk.